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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,527	08/05/2003	William V. Luitje	706139US2	6059

24938 7590 01/26/2005

EXAMINER
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DAIMLERCHRYSLER INTELLECTUAL CAPITAL CORPORATION

NGUYEN, TAN QUANG

CIMS 483-02-19

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AUBURN HILLS, MI 48326-2757

ART UNIT	PAPER NUMBER
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3661

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



**Office Action Summary**

Application No.

10/634,527

Applicant(s)

LUITJE ET AL.

Examiner

TAN Q NGUYEN

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>08/05/03</u> .  | 6) <input type="checkbox"/> Other: _____                                    |



## DETAIL ACTION

### *Notice to Applicant(s)*

1. This application has been examined. Claims 1-4 are pending.
2. The prior art submitted on August 05, 2003 has been considered.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).
5. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai (6,009,496) in view of Koelle et al. (5,826,205) and Neufeld (2003/0065935).



6. Tsai discloses a method and apparatus for reprogramming of data into an embedded flash memory of the microcontroller which include means for receiving programming instructions and the application program via a communication port (see figures 2, 5, step 80), means for writing the received application program to the reprogrammable memory (see figures 2-4 and figure 5, step 82), and means for determining whether reprogramming operation is to be performed to either reprogram the memory or execute the normal operation (see figure 6 and the related text).

7. Tsai does not disclose that the system in use in the vehicle. However, such reprogrammable controller for the vehicle is widely used and as disclosed in at least the Koelle et al. reference in at least figure 1. It would have been obvious to one ordinary skill in the art to realize that such teaching of Tsai can be used in the on-board vehicle for reprogramming the data of the flash memory easily and cost effective.

8. Tsai also does not specifically disclose the step of determining whether a valid program has been stored in the reprogrammable memory. However, Neufeld suggests a system which includes the steps of checking whether the boot block/firmware is operable (valid) and if it is not valid, it can be reprogrammed or place the device in the shutdown mode (see at least paragraphs 0008, 0010, 0022). It would have been obvious to one of ordinary skill in the art to incorporate such teaching of Neufeld into the systems of Tsai and Keolle et al. to provide the system with the enhanced capacity of, instead of checking the request for reprogramming signal is present, checking for the valid application program stored in the memory, and either perform the normal operation, reprogram the memory or shutdown the system depends of the result of the validation signal.



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9. Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. None of the prior art teaches the ECU module being operative to place the vehicle controller in one of a low power state and a power down state after a predetermined amount of time, or when the software module expects programming instructions to arrive via the communication port and the programming instructions have been received after the predetermined amount of time.

### ***Conclusion***

11. Claims 1 and 2 are rejected. Claims 3 and 4 are objected.

12. The following references are cited as being of general interest: Smith (5,949,997), Decker et al. (6,128,694), and Lin et al. (6,523,083).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Tan Q. Nguyen, whose telephone number is (703) 305-9755. The examiner can normally be reached on Monday-Thursday from 5:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black, can be reached on (703) 305-8233.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to the Official Fax Center:

(703) 872-9306, (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park V, 2451  
Crystal Drive, Arlington, VA., Seventh Floor (Receptionist).



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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/tqn  
January 24, 2005

  
**TAN Q. NGUYEN**  
*Primary Examiner*  
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